

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. **77-1290**

WILLIAM SCOTT SHEPHERD,

Petitioner,

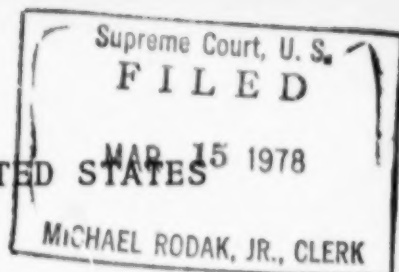
v.

THE PEOPLE OF THE STATE  
OF CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEAL  
OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FOUR

HAYES & HUME  
BARRY B. LANGBERG  
132 South Rodeo Drive  
Beverly Hills, California 90212  
Attorneys for Petitioner





IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. \_\_\_\_\_

WILLIAM SCOTT SHEPHERD,

Petitioner,

v.

THE PEOPLE OF THE STATE  
OF CALIFORNIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO

THE COURT OF APPEAL OF THE

STATE OF CALIFORNIA,

SECOND APPELLATE DISTRICT,

DIVISION FOUR

To the Honorable, the Chief Justice and  
Associate Justices of the Supreme Court  
of the United States:

William Scott Shepherd, the petitioner  
herein, prays that a Writ of Certiorari

issue to review the judgment of the Court  
of Appeal of the State of California,  
Second Appellate District, Division Four,  
entered in the above-entitled case on  
October 19, 1977. Petition for Rehearing  
denied November 7, 1977. Petition for  
Hearing in the Supreme Court of the State  
of California denied December 15, 1977.

#### OPINIONS BELOW

The opinion of the Court of Appeal of  
the State of California, Second Appellate  
District, Division Four, is reported at  
74 C.A.3d 334 (1977), and printed in  
Appendix "A" hereto, page 9. The  
opinion of the Appellate Department of  
the Superior Court of the State of  
California for the County of Los  
Angeles is printed in Appendix "A"  
hereto, page 21.

#### JURISDICTION

The judgment of the Court of Appeal



of the State of California, Second Appellate District, Division Four, was entered on October 19, 1977. A timely Petition for Rehearing was denied on November 7, 1977 (Appendix "A", page 29). A Petition for Hearing to the Supreme Court of the State of California was denied on December 15, 1977 (Appendix "A", page 30). The jurisdiction of the Supreme Court is invoked under 28 U.S. Code §1257, subdivision 3.

#### QUESTIONS PRESENTED

1. Whether Los Angeles Municipal Code §63.51(k), in forbidding the offering for sale of any item within the limits of any public park or recreational facility under the control or management of the Los Angeles Memorial Coliseum Commission, constitutes an infringement of petitioner's right to free speech in violation of the First Amendment.

#### CONSTITUTIONAL AND STATUTORY

##### PROVISIONS INVOLVED

1. First Amendment to the United States Constitution printed in Appendix "B" hereto, page 31.

2. Los Angeles Municipal Code §63.51(k) printed in Appendix "B" hereto, page 32.

3. Los Angeles Municipal Code §42.03 printed in Appendix "B" hereto, page 33.

##### STATEMENT OF THE CASE

Petitioner was convicted under Los Angeles Municipal Code §63.51(k) in the Municipal Court, County of Los Angeles, State of California. Prior to trial petitioner filed a demurrer to the complaint asserting that the ordinance under which petitioner was prosecuted was an unconstitutional violation of his First Amendment rights. Said demurrer was overruled. Subsequent to the convic-



tion in Municipal Court, petitioner appealed to the Appellate Department of the Superior Court, County of Los Angeles, State of California, and said Appellate Department reversed the judgment of conviction in an opinion certified for publication and filed on July 1, 1977, which opinion is printed in Appendix "A" hereof at page 21.

On July 14, 1977, Division Four of the Second Appellate in the Court of Appeal of the State of California filed an order pursuant to Rule 62(a) of the California Rules of Court transferring this case to the Court of Appeal for hearing and decision in order to settle important questions of law. On October 19, 1977, the Court of Appeal of the State of California, Second Appellate District, Division Four, filed its opinion, certified for publication, affirming the judgment of the Municipal

Court.

A Petition for Rehearing was timely filed in the Court of Appeal, which petition was denied. A Petition for Hearing in the Supreme Court of the State of California was timely filed. Said petition was denied on December 15, 1977.

#### REASONS FOR GRANTING WRIT

Section 63.51(k) constitutes an absolute and complete abridgment of the First Amendment right of petitioner to offer amusement tickets for sale at face value. Petitioner herein was convicted for offering for sale three tickets to a football game to be played by the Los Angeles Rams in the Los Angeles Memorial Coliseum. The only testimony presented by the People in the trial court was that petitioner offered for sale three tickets at face value. There was no evidence of any kind whatsoever that petitioner actually made a sale of any tickets. Los



Angeles Municipal Code §63.51(k) prohibits petitioner from selling his tickets on the grounds controlled by the Coliseum Commission without obtaining written consent. An undisputed fact, acknowledged by the District Court of Appeal in its opinion, is that it is impossible for petitioner to obtain the written permission of the Coliseum Commission. In addition, Los Angeles Municipal Code §42.03 unequivocally and absolutely prohibits petitioner from offering to sell his tickets on any public street, sidewalk, park or other public place or any place which is open to the public. Therefore, petitioner is effectively precluded and restrained from offering these tickets for sale at face value anywhere in the City of Los Angeles. The rulings of this court in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc., (1976)

425 U.S. 748; 96 S.Ct. 1817, and Linmark Association Inc. v. Township of Willingboro, 429 U.S. 938; 97 S.Ct. 1614 (1977), are applicable. The semi-commercial speech engaged in by petitioner is subject to the protection of the First Amendment and is subject only to reasonable regulations as to time, place and manner. In addition, petitioner is entitled to offer for sale and sell the items of personal property in question in a reasonable and practical manner. The alternatives left under the Municipal Code sections are far from satisfactory. Petitioner not only has no practical method of disposing of these items, but has no method at all of offering them for sale to the public.

March 13, 1978

Respectfully submitted,

HAYES & HUME

By

Barry B. Langberg  
Counsel for Petitioner



OCT 2 1977

2.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION FOUR

THE PEOPLE,	)	Crim. No. 30932
	)	(Superior Ct. No. CR A 14663;
Plaintiff and	)	Municipal Ct. No. 31534109)
Respondent,	)	
	)	
vs.	)	COURT OF APPEAL - SECOND DIST.
	)	<b>FILED</b>
WILLIAM SCOTT SHEPHERD,	)	OCT 19 1977
	)	CLAY ROBBINS, JR. <i>Clerk</i>
Defendant and	)	
Appellant.	)	<i>Deputy Clerk</i>

APPEAL from a judgment of the Municipal Court of  
the Los Angeles Judicial District. Alan G. Campbell, Judge.  
Affirmed.

Hayes & Hume and Barry B. Langberg for Defendant  
and Appellant.

Burt Pines, City Attorney, George C. Eskin, Chief  
Assistant City Attorney, Ward G. McConnell, Assistant City  
Attorney, and James H. Hodges, Deputy City Attorney, for  
Plaintiff and Respondent.

This appeal was transferred to this court under  
rules 62-29, California Rules of Court, to settle an  
important issue of law, that is, whether a Los Angeles  
Municipal Code section relating to the sale of merchandise  
in public parks is constitutional.

Defendant was convicted of offering to sell three  
football tickets upon the premises of the Los Angeles  
Memorial Coliseum, in violation of Los Angeles Municipal  
Code section 63.51, subdivision (k), which reads as follows:

"Within the limits of any public park or recrea-  
tional facility in the City of Los Angeles under the  
control, operation or management of the Board of  
Recreation and Park Commissioners, the Los Angeles  
County Department of Parks and Recreation or the  
Los Angeles Memorial Coliseum Commission, no person  
shall:

" . . . .

"(k) Sell or offer for sale any merchandise,  
article or thing of any kind or nature whatsoever  
unless such person possesses a written consent of  
said board, department or commission."



3.

The evidence showed that defendant was a student who had come to the Coliseum to see a professional football game, and brought with him three extra tickets belonging to his father who had decided not to use them. Defendant was offering them for sale at face value, and he had no permission from the Coliseum Commission. Warning signs were posted in the vicinity stating that resale of tickets was illegal. A notice on the back of the ticket referred to Los Angeles Municipal Code section 42.03 which prohibits a sale of tickets within a public park except from a building or ticket booth.

No question is raised as to the sufficiency of the evidence to support the conviction.

Before discussing the issues argued on this appeal it is useful to place the challenged ordinance in context in the system of municipal government. Section 63.51 is headed "park regulations" and lists a number of activities which are forbidden in parks and recreation facilities within the city. Subdivision (k) does not itself attempt to define the limits of sales activity within a park.

4.

Rather, it is a penal ordinance providing a sanction against sales activities which are not authorized by the board which is entrusted with the management of the park.

The Los Angeles City Charter, in sections 170 and 171, places the management of city parks in the control of the Department of Recreation and Parks, headed by a Board of Recreation and Parks Commissioners. These charter sections define the powers of the department and the limitations upon its power to allow the use of city parks for other than recreational purposes.

The Los Angeles Memorial Coliseum, though within the City of Los Angeles, is under the management of the Los Angeles Memorial Coliseum Commission, which was created by a joint powers agreement of the City of Los Angeles, the County of Los Angeles and the Sixth Agricultural Association under Title 1, Division 7, Chapter 5 (commencing with section 6500) of the Government Code. We take judicial notice of that joint powers agreement.

That agreement creates a Coliseum Commission as an entity which is for some purposes separate from the



parties to the agreement. (Gov. Code, § 6507.) The Commission is given the power, duty and authority to manage, operate and control the Coliseum and other premises placed under its jurisdiction by the parties to the agreement. The agreement empowers the Commission to lease, license, use or permit the use of the Coliseum for competitive sports and other recreational activities for the public benefit.<sup>1/</sup>

---

1 Paragraph 12 of the joint powers agreement provides: "The Commission shall have power and authority, and it shall be its duty with respect to the Coliseum, proposed sports arena, pavilion, stadium or other facility now existing or hereafter brought within the jurisdiction of the Commission: . . . (f) To lease, license, rent, use, or permit the use of any such facility, for competitive sports, athletics, games, pageants, parades, plays, celebrations, patriotic gatherings, public recreation, motion picture production, or public gatherings, or such other events as are deemed appropriate, or for Municipal, County or District affairs, and particularly to develop and promote a wider use of the Coliseum, sports arena, pavilion, stadium or other facility, through the presentation of festivals, pageants, games, exhibits, industrial, horticultural or agricultural shows, conventions, exhibitions and productions of a local, regional, national or international character, primarily to the end that the citizens and public generally may enjoy and receive the greatest benefit possible from the Coliseum, sports arena, pavilion or stadium or other facility, and the City, the County and the District may more effectively exploit their climatic, geographical, recreational, cultural, and commercial resources and advantages; . . . ."

This statement of powers provides the standards by which the Commission must select the individuals and groups who will be authorized to transact business on the Coliseum premises. A prohibitory ordinance such as Municipal Code section 63.51 serves the purpose of protecting the Coliseum, its licensees and the public from an invasion by unauthorized vendors and others whose use of the premises would be incompatible with the normal function of a park.

Defendant is doubtless correct in his assumption that the prohibition of unauthorized sales on Coliseum grounds amounts to an absolute prohibition as to him. The People do not contend there is any procedure in existence whereby a holder of three extra tickets may obtain a license to sell them at the Coliseum entrance. But it does not follow that the limitation upon the use of Coliseum grounds for business purposes is unconstitutional as applied to him.

Defendant's conduct, attempting to sell three surplus tickets, seems harmless enough when viewed in isolation. But the city council, in enacting the ordinance, was entitled to view a larger problem. The Coliseum and its



surrounding land is maintained for the use of the general public for recreation and amusement. The unregulated use of that area by peddlers of tickets or other property would add to congestion, annoyance and inconvenience in areas where crowds must be moved rapidly and safely. Persons with tickets for sale may be expected to intrude themselves along the most heavily travelled pathways, audibly or visually demanding the attention of the tens of thousands who approach the Coliseum gates within a short period of time. An ordinance which attempted to distinguish between the casual vendor and the commercial operator might well be ineffective due to the practical problems of identification. Rather than to subject the Coliseum's visitors to a gauntlet of ambulant vendors, the city council could reasonably conclude that all sales should be prohibited except those by licensed concessionaires, whose places of operation and business methods are subject to the Commissioners' control.<sup>2/</sup>

---

2 In People v. Van Wong (1958) 165 Cal.App.2d Supp. 821 the Appellate Department of the Los Angeles Superior Court held unconstitutional a former version of Municipal Code section 42.03, which forbade selling tickets upon a street or park within 250 feet of the Coliseum. The opinion of that court stated at page 824: "It seems patently discriminatory to hold that sales may be made at a ticket booth on

The power of the city to protect its parks against unauthorized commercial use must be distinguished from the use of the police power to regulate either the conduct of business on private property, (see, e.g., Sunset Amusement Co. v. Board of Police Commissioners (1972) 7 Cal.3d 64) or to regulate the exercise of constitutionally protected free speech. Defendant does not contend that his tickets have any content protected by the First Amendment,<sup>3/</sup> but he asserts that his speech, offering tickets for sale, is constitutionally protected. The cases upon which he relies do not support

---

the public grounds, but cannot be made in a single instance from a citizen's pocket. The former will give rise to the accumulation of crowds, the impedance of passage; the latter would do neither. Peanuts, popcorn, chewing gum, programs, or newspapers could be sold but a ticket cannot. This clearly is the type of discrimination which invalidates an ordinance, whose restrictions must have a reasonable and nondiscriminatory relationship to the public's right of use of streets and public grounds, and where the classification is not based on any inherent differences relating thereto."

The quoted passage reflects judicial fact-finding on the subjects of park management and crowd control. Insofar as Van Wong is based upon the distinction between selling tickets and selling peanuts, it is inapposite, since the ordinance involved here applies to both. Despite the view of the Van Wong court, we do not regard it as unreasonable or improper for the Coliseum Commission and the Los Angeles City Council to determine that the Coliseum grounds should not be made available to casual sellers of tickets or other items.

3 We need not decide whether section 63.51, prohibiting sales of merchandise, could be construed to cover sales of newspapers or other printed media of communication. (See Welton v. City of Los Angeles (1976) 18 Cal.3d 496, 506.) As to that we express no opinion.



him.

Va. Pharmacy Bd. v. Va. Consumer Council (1976) 425 U.S. 748 held unconstitutional a statute prohibiting pharmacists from advertising prices. The Supreme Court declared that speech which does no more than propose a commercial transaction may nevertheless have constitutional protection, but that it may be subject to reasonable regulations as to time, place and manner. The Virginia statute was objectionable as prohibiting absolutely the publication of information which would serve the public interest.

In the case here, the conduct which the statute seeks to eliminate is the intrusion of the seller, and his effect upon the safety, comfort and enjoyment of the crowds of people streaming into the Coliseum. The purpose and effect of the ordinance is not to censor or suppress the content of the seller's message, which may lawfully be communicated elsewhere. The limitation upon the use of the park for sales solicitation is, under the circumstances, a reasonable place limitation based upon a significant governmental interest.

McKay Jewelers, Inc. v. Bowron (1942) 19 Cal.2d

595 also deals with a factually distinguishable situation. The issue was the constitutionality of an ordinance prohibiting solicitation from any doorway opening onto a public sidewalk. The case came up upon a demurrer to a complaint, the allegations of which were thus deemed to be true. Those allegations were that plaintiffs operated retail stores, that they engaged in the practice of speaking to passers-by who paused to inspect merchandise on display in the windows, that all soliciting was done in a quiet and dignified manner, and that at no time did the plaintiffs' employees step off their private premises to engage in such conversations. The Supreme Court held that that complaint stated a cause of action for an injunction prohibiting the city from interfering with the alleged conduct. Of particular interest here is the language of the Supreme Court distinguishing between public and private property as a place of business. The court said (at p. 603):

"Respondents also cite and rely on the cases of Williams v. Arkansas, 217 U.S. 79 [30 S.Ct. 493, 54 L. Ed. 673, 18 Ann. Cas. 865] and In re Barmore, 174 Cal. 286 [163 Pac. 50]. The Williams case upheld



legislation prohibiting drummers from soliciting business on trains. The Barmore case upheld an ordinance prohibiting the solicitation of business for the transportation of persons or baggage in depots. This brief reference to those cases is sufficient to distinguish them from the situation now under consideration. Travelers would have no alternative but to face and endure the persistent solicitation on trains or in depots, and legislation prohibiting such activity is undoubtedly of great benefit to the peace and convenience of the traveling public. On the other hand, in the instant case, if a person does not desire to listen to the importunities of appellants, he need only pass on, as appellants confine their activities to their own private properties."

What has been said above answers defendant's contention that the ordinance interferes with his right to dispose of personal property. He may dispose of it, but he is not entitled to use the Coliseum for that purpose.

The same reasoning also refutes defendant's contention that the city ordinance is pre-empted by Penal Code section 346, which prohibits ticket scalping. The subject and purpose of the city ordinance is not to regulate ticket sales as such, but to limit business activities on public property dedicated to recreational use. The use of a city park is a municipal affair (see Simons v. City of Los Angeles (1976) 63 Cal.App.3d 455, 468) and the city's park regulations are not pre-empted by section 346.

The judgment is affirmed.

CERTIFIED FOR PUBLICATION.

FILES, P.J.

We concur:

KINGSLEY, J.

DUNN, J.



sd

RECEIVED

JUL 5 1977

FILED

JUL 1 - 1977

John L. Conneran, Acting County Clerk

*B. R. Seal*  
By B. R. SEAL, Deputy

CERTIFIED FOR PUBLICATION

APPELLATE DEPARTMENT OF THE SUPERIOR COURT

OF THE STATE OF CALIFORNIA FOR THE COUNTY OF LOS ANGELES

PEOPLE OF THE STATE OF CALIFORNIA, ) Superior Court No. CR A 14663  
Plaintiff and Respondent, ) Municipal Court of the  
vs. ) Los Angeles Judicial District  
WILLIAM SCOTT SHEPHERD, ) No. 31534109  
Defendant and Appellant. ) OPINION AND JUDGMENT

Appeal by defendant from judgment of the Municipal Court, Alan G. Campbell, Judge.

Judgment reversed.

For Appellant - Hayes & Hume  
By Barry B. Langberg

For Respondent - Burt Pines, City Attorney  
George C. Eskin, Chief Assistant City Attorney  
Criminal Branch  
Ward G. McConnell, Assistant City Attorney  
Chief Appellate Section  
By James M. Hodges, Deputy City Attorney

-oOo-

Appellant was convicted of selling three football tickets in a public park, without a permit, in violation of Los Angeles Municipal Code section 63.51(k). The ordinance in question reads as follows:

////

-1-

APPENDIX "A"

-21-

"Within the limits of any public park or recreational facility in the City of Los Angeles under the control, operation or management of the Board of Recreation and Park Commissioners, the Los Angeles County Department of Parks and Recreation or the Los Angeles Memorial Coliseum Commission, no person shall:

(k) Sell or offer for sale any merchandise, article or thing of any kind or nature whatsoever unless such person possesses a written consent of said board, department or commission."

The evidence showed that while the defendant was outside the north entrance of the Coliseum, he asked an undercover police officer if the latter wanted to buy three tickets for that afternoon's Rams football game at face value. Defendant was arrested after he told the officer that he had no permit. Signs posted in the area stated that it was illegal to sell tickets and referred to both the ordinance section under consideration here and another section (section 42.03 of the Los Angeles Municipal Code) as to which no change was made. Defendant testified that he was a college student and the three tickets admitted into evidence were his father's season tickets, with his father's name on them. He stated that his brother and he went to the game with his father's tickets and that his father had decided to stay home and watch the game on television. Just before they left home, a friend of their father's decided to stay home and watch the game on television also and so he offered his two tickets to defendant's father who gave them to his

-2-

-22-



1 sons. They decided to take them because they were better seats  
2 than their father had. Upon arriving at the Coliseum, they saw  
3 other people selling tickets and defendant decided it would be all  
4 right if he did the same, as long as he did not sell the tickets  
5 for more than face value. He stated that he did not offer them to  
6 anyone for more than face value and he did not know it was illegal  
7 to sell the tickets. On cross-examination, he stated that he had  
8 been to the Coliseum before, but had never noticed the signs posted  
9 there which state that resale of tickets is illegal nor had he  
10 noticed a message on the back of the tickets which refers to sec-  
11 tion 4203.

12 This case is presented to us against a background of other  
13 decisions invalidating laws restricting or prohibiting the sale of  
14 tickets (Ex Parte Quarq [1906] 149 Cal.79; In re Dees [1920] 46  
15 Cal.App.656; People v. Van Wong [1958] 165 Cal.App.2d Supp. 821).  
16 We need not attempt to determine if the holdings of any of those  
17 decisions otherwise apply here, because, as will be developed, the  
18 ordinance under scrutiny must fall in its application to appellant  
19 since it is not accompanied by any standards or by any safeguards  
20 adequate to assure that the legislative power delegated to the Los  
21 Angeles Memorial Coliseum Commission is not abused.<sup>1/</sup>

22  
23 <sup>1/</sup> We do not pause to analyze in this opinion the effect of changing  
24 due process concepts concerning the right of government to exercise  
25 the police power. Compare, for example, Ex Parte Quarq, *supra*, 149  
26 Cal.79, with State Board v. Thrift-D-Lux Cleaners [1953] 40 Cal.2d  
27 438 and with the statement in Doyle v. Board of Barber Examiners  
28 [1963] 219 Cal.App.2d 504, 514: "As we understand current doctrine,  
judicial examination of a statute under economic due process attack  
is completed when any fact or facts appear which the Legislature  
might rationally have accepted as the basis for a finding of public  
interest." Our holding that the ordinance contains insufficient  
standards and safeguards makes it unnecessary to explore this issue.

1 The People have admitted that there are no written guide-  
2 lines for the Coliseum Commission's determination whether to grant  
3 the written consent referred to in the ordinance. Appellant argues  
4 that the ordinance unconstitutionally interferes with his right to  
5 acquire, possess and dispose of personal property, that it has no  
6 reasonable relation to a proper exercise of the police power, and  
7 that it is unconstitutionally broad. We find it unnecessary to  
8 consider these contentions because we agree with appellant's further  
9 argument that the fact that there is no basis stated for the grant  
10 or denial of such written consent invalidates the ordinance.

11 By providing that no articles shall be sold in public parks  
12 or recreational facilities in the City of Los Angeles unless a  
13 written consent is given by the Board, Department or Commission  
14 involved, the ordinance of necessity delegates to the administra-  
15 tive agency discretion to determine the circumstances under which  
16 it will grant such consent. The doctrine prohibiting delegation of  
17 legislative power applies to the legislative powers of a city  
18 (Kugler v. Yocum [1968] 69 Cal.2d 371, 375).

19 Legislative power, "may properly be delegated if channeled  
20 by a sufficient standard. 'It is well settled that the legislature  
21 may commit to an administrative officer the power to determine  
22 whether the facts of a particular case bring it within a rule or  
23 standard previously established by the legislature . . . .'"  
24 Id., at pages 375-376; quoting Dominquez Land Corp. v. Daugherty  
25 [1925] 196 Cal.468, 484.

26 In Dillon v. Municipal Court [1971] 4 Cal.3d 860, a municipal  
27 ordinance made it unlawful to participate in any parade or demon-  
28 stration on the public streets or sidewalks of a city without first



1 obtaining a permit from the city. The Supreme Court said of the  
2 ordinance provision, "The glaring and fatal defect in the section,  
3 however, is that it contains no standards whatsoever -- let alone  
4 standards designed to be 'narrow, objective and definite' -- to  
5 guide and govern the city officials in their decisions to grant or  
6 deny permits. As the Supreme Court said in Niemotko v. Maryland,  
7 supra, 340 U.S. at p. 272 [95 L.Ed. at p. 271], 'No standards  
8 appear anywhere; no narrowly drawn limitations; no circumscribing  
9 of this absolute power; no substantial interest of the community  
10 to be served. It is clear that all that has been said about the  
11 invalidity of such limitless discretion must be equally applicable  
12 here.' [¶] In short, the section is a barefaced example of uncon-  
13 trolled discretion." Cited 4 Cal.3d at page 870. See also Dulany  
14 v. Municipal Court [1974] 11 Cal.3d 77, 86.

15 " . . . An unconstitutional delegation of power  
16 occurs when the Legislature confers upon an administra-  
17 tive agency the unrestricted authority to make funda-  
18 mental policy determinations. (Citations omitted.)  
19 To avoid such delegation, the Legislature must provide  
20 an adequate yardstick for the guidance of the adminis-  
21 trative body empowered to execute the law. . . ."

22 Clean Air Constituency v. California State Air  
23 Resources Bd. [1974] 11 Cal.3d 801, 816-817.

24 The requirements for standards "is but one method for the  
25 effective implementation of the legislative policy decision; the  
26 requirement possesses no sacrosanct quality in itself so long as  
27 its purpose may otherwise be assured." Kugler v. Yocum, supra,  
28 69 Cal.2d at page 381. Safeguards inherent in a statute which

1 protect against its arbitrary exploitation and are adequate to pre-  
2 vent abuse of the delegated legislative power may obviate the need  
3 for standards. (Id. at 381-382.) See also, Southern Pacific Trans-  
4 portation Co. v. Public Utilities Commission [1976] 18 Cal.3d 308,  
5 313. Discretion legally vested in an administrative body cannot be  
6 arbitrarily exercised so as to "affect capriciously the property or  
7 property rights of persons subjected to" the administrative control  
8 of an agency. Walsh v. Kirby [1974] 13 Cal.3d 95, 103, 105-106.

9 The ordinance here prohibits sales of any kind of property,  
10 anywhere on any park or recreational facilities in the City of Los  
11 Angeles unless administrative consent, unguided by any standard  
12 mentioned in the ordinance, is first given. The City Council in  
13 enacting the ordinance has not furnished any guideline whatsoever  
14 through the boards and commissions charged with administering the  
15 ordinance. Despite the opportunity which the ordinance gives to  
16 those administrative bodies to allow sales where there is no police  
17 power reason to restrict them, the ordinance furnishes no guidelines  
18 to the exercise of such power.

19 The tickets attempted to be sold by appellant here were  
20 property which appellant had a right to sell, absent valid con-  
21 tractual limitations. Ex Parte Quarq, supra, 149 Cal.79, 80-81;  
22 see People v. Davenport [1937] 21 Cal.App.2d 292, 296-297; People v.  
23 Pace [1925] 73 Cal.App.548, 561. The ordinance involved here  
24 sharply limits a right protected by the Constitution of California  
25 as inalienable (Article I, section 1): "All people are by nature  
26 free and independent and have inalienable rights. Among these are  
27 . . . , acquiring, possessing, and protecting property . . . ."  
28 This right "includes the right to dispose of such property in such



1 innocent manner as he pleases, and to sell it for such price as he  
2 can obtain in fair barter. Any statute which interferes with this  
3 right, except in cases where the public health, morals, or safety,  
4 or the general welfare authorizes such restriction as an exercise  
5 of the police power, is, to the extent of such interference, un-  
6 constitutional and void. (8 Cyc. 886.) These rights are in fact  
7 inherent in every natural person, and do not depend on constitu-  
8 tional grant or guaranty. Under our form of government by consti-  
9 tution, the individual, in becoming a member of organized society,  
10 unless the constitution states otherwise, surrenders only so much  
11 of these personal rights as may be considered essential to the just  
12 and reasonable exercise of the police power in furtherance of the  
13 objects for which it exists." Ex Parte Quarq, supra, 149 Cal. at  
14 page 80.

15 Speaking of this power the Supreme Court said in State Board  
16 v. Thrift-D-Lux Cleaners [1953] 40 Cal.2d 438, 440, "Under the law  
17 generally that power extends to legislation enacted to promote the  
18 public health, safety, morals and general welfare. It has rightly  
19 been said that 'such [police] regulations may validly be imposed if  
20 they constitute a reasonable exertion of governmental authority for  
21 the public good. If there is a proper legislative purpose, a law  
22 enacted to carry out that purpose, if not arbitrary nor discrimina-  
23 tory, must be upheld by the courts.' (In re Fuller [1940] 15 Cal.2d  
24 425, 428 [102 P.2d 321].) However, in the exercise of the police  
25 power the law places limits on the discretion of the Legislature.  
26 Whether there has been a reasonable exercise of this power is a  
27 / / / /  
28 / / / /

1 court question."<sup>2/</sup>  
2 The judgment is reversed.  
3 CERTIFIED FOR PUBLICATION.  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

We concur:

Cole  
Presiding Judge  
Albin  
Judge  
Wheeler  
Judge

23 <sup>2/</sup> In 1976 this court in an unpublished opinion upheld the validity  
24 of the very ordinance here involved. In their brief, counsel for  
25 the People cited our decision in that case, in apparent violation  
26 of Rule 977 of the California Rules of Court. Appellant has moved  
27 that the reference be stricken. Because of the result which we  
28 reach in this case, based on reasoning not articulated by us in the  
unpublished opinion, we find it unnecessary to determine the con-  
sequences of a violation of Rule 977 or to express an opinion as to  
the validity of that rule.

/ / / /



NOV 7 - 1977, 19

Los Angeles, Cal.

TITLE

No 30932

The Court

PETITION FOR REHEARING DENIED

CLAY ROBBINS, Clerk

92449-112 6-77 5M ① OSP

APPENDIX "B"

CLERK'S OFFICE, SUPREME COURT  
4250 STATE BUILDING

SAN FRANCISCO, CALIFORNIA 94102

DEC 15 1977

I have this day filed Order

HEARING DENIED

In re: 2 Crim. No. 30932

People

vs.  
Shepherd

Respectfully,

G. E. BISHEL  
Clerk

90497-877 4-77 5M OSP



AMENDMENT I TO THE CONSTITUTION  
OF THE UNITED STATES OF AMERICA

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

LOS ANGELES MUNICIPAL CODE

§63.51(k)

"Within the limits of any public park or recreational facility in the City of Los Angeles under the control, operation or management of the Board of Recreation Park Commissioners, the Los Angeles County Department of Parks and Recreation or the Los Angeles Memorial Coliseum Commission, no person shall:

" . . . .

"(k) Sell or offer for sale any merchandise, article or thing of any kind or nature whatsoever unless such person possesses a written consent of said board, department of commission."



LOS ANGELES MUNICIPAL CODE

§42.03

"Selling of tickets of admission to places of public assemblage in public places and places open to the public --

Exceptions:

(a) Except as otherwise provided in this section, no person in or upon any public street, sidewalk, park or other public place shall sell or resell or offer to sell or resell any ticket of admission to a place of public assemblage.

(b) Except as otherwise provided in this section, no person in or upon any place which is open to the public shall sell or resell or offer to sell or resell any ticket of admission to a place of public assemblage.

(c) The provisions of subsection (a) and (b) of this section shall not include or apply to the sale of such tickets at

or from any ticket office, booth or other similar place regularly and permanently established and maintained therefor with the express permission and authorization of the person or governmental agency in charge, care or control of the property where such office, booth or place is located.

(d) For purposes of this section, the following words and phrases are defined as follows:

(1) 'Place of Public Assemblage' shall mean every place of public amusement or entertainment, stadium, auditorium, theater, athletic field, concert hall or arena which is open to the public upon compliance with the requirements of admission thereto.

(2) 'Place Open to the Public' shall mean every place of public amusement or entertainment, stadium, auditorium, theater, athletic field, concert



hall or arena and the property upon which such place is located or any other property contiguous thereto which is under the same care, management or control."

#### CERTIFICATE OF SERVICE

I, the undersigned, certify and declare that I am a citizen of the United States, over the age of 18 years, employed in the County of Los Angeles, State of California, and not a party to the within cause. On March 14, 1978, I deposited in the United States Mail, in a sealed envelope with postage thereon fully prepaid, addressed to the following, three copies of the Petition for Writ of Certiorari herein:

Burt Pines, City Attorney

1700 City Hall East

Los Angeles, California 90012

Attention: James M. Hodges, Esq.

I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

Place of mailing: Beverly Hills,



California.

Executed this 14th day of March,  
1978, at Beverly Hills, California.

Gay Shively



APR 26 1978

MICHAEL R. ROSEN, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

NO. 77-1290

WILLIAM SCOTT SHEPHERD,

Petitioner,

vs.

PEOPLE OF THE STATE OF CALIFORNIA

Respondent.

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

BRIEF OF RESPONDENT  
IN OPPOSITION TO GRANTING OF  
WRIT OF CERTIORARI

BURT PINES

City Attorney

WARD G. McCONNELL

Assistant City Attorney

MICHAEL PETER ALCANTAR

Deputy City Attorney

1700 City Hall East

200 North Main Street

Los Angeles, CA 90012

(213) 485-5483

Attorneys for Respondent



IN THE  
SUPREME COURT OF THE UNITED STATES

October Term, 1977

NO. 77-1290

WILLIAM SCOTT SHEPHERD, )  
 )  
Petitioner, )  
vs. )  
 )  
PEOPLE OF THE STATE OF CALIFORNIA )  
 )  
Respondent. )  
\_\_\_\_\_ )

BRIEF OF RESPONDENT  
IN OPPOSITION TO GRANTING OF  
WRIT OF CERTIORARI  
\_\_\_\_\_

BURT PINES  
City Attorney  
WARD G. McCONNELL  
Assistant City Attorney  
MICHAEL PETER ALCANTAR  
Deputy City Attorney  
1700 City Hall East  
200 North Main Street  
Los Angeles, CA 90012  
(213) 485-5483  
Attorneys for Respondent



TOPICAL INDEX

	<u>Page</u>
Table of Authorities	ii
OPINIONS BELOW	2
JURISDICTION	2
QUESTION PRESENTED	3
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
ARGUMENT	6
THERE IS NO SUBSTANTIAL FEDERAL QUESTION PRESENTED	6
THERE IS NO CONFLICT OF DECISION	10
CONCLUSION	15



# TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
Braxton v. Municipal Court 10 Cal.3d 138 (1973)	12, 13
Fox v. Washington 236 U.S. 273, 35 S.Ct. 383, 59 L.Ed. 573 (1915)	10
Garner v. Public Works of Los Angeles, 341 U.S. 716, 95 L.Ed. 1317, 71 S.Ct. 909 (1951)	11
Kay, In re 1 Cal.3d 930, 83 Cal.Rptr. 686, 464 P.2d 142 (1970)	11
Linmark Associates Inc. v. Township of Willingboro, 429 U.S. 938, 97 S.Ct. 1614 (1977)	7, 10 13, 14
People v. Van Wong 165 Cal.App.2d Supp. 821 (1958)	9
Virginia Pharmacy Board v. Virginia Citizens Consumer Council 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976)	6, 13
Walton v. City of Los Angeles 18 Cal.3d 497 (1976)	9

## Statutes

Los Angeles Municipal Code	
§ 42.03	9
§ 63.51(k)	Passim

ii.

IN THE  
SUPREME COURT OF THE UNITED STATES  
October Term, 1977  
NO. 77-1290

WILLIAM SCOTT SHEPHERD, )  
 )  
 Petitioner, )  
 vs. )  
 PEOPLE OF THE STATE OF CALIFORNIA, )  
 Respondent. )

BRIEF FOR RESPONDENT  
IN OPPOSITION TO GRANTING OF  
WRIT OF CERTIORARI

ON PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF APPEAL OF THE STATE  
OF CALIFORNIA SECOND APPELLATE DISTRICT  
DIVISION FOUR

TO THE HONORABLE CHIEF JUSTICE AND ASSO-  
CIATE JUSTICES OF THE SUPREME COURT OF  
THE UNITED STATES:

The respondent, People of the State of  
California, respectfully prays that the  
Petition for a Writ of Certiorari to re-  
view the judgment of the Court of Appeal

1.



of the State of California, entered against petitioner in the matter of People v. William Scott Shepherd, 74 Cal. App.3d 344 (1977), be denied.

#### OPINIONS BELOW

The opinion of the Court of Appeal of the State of California (Appendix "A" of the Petition) is reported at 74 Cal.App. 3d 334 (1977). The unpublished opinion of the Appellate Department of the Superior Court of the State of California, County of Los Angeles is also set forth in Appendix "A" of the Petition.

#### JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

#### QUESTION PRESENTED

Whether petitioner's federal First Amendment guarantee of free speech, as made applicable to the states by the Fourteenth Amendment, protected his oral solicitation for the unauthorized personal resale of excess football game tickets at the Los Angeles Memorial Coliseum in violation of a municipal ordinance prohibiting the unlicensed sale of anything on the grounds of any public park?

#### CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner was convicted of offering to sell three football tickets without a permit upon the premises of the Los Angeles Memorial Coliseum in violation of Los Angeles Municipal Code § 63.51(k). The ordinance reads as follows:

"Within the limits of any public park or recreational facility in the City of Los Angeles under the control, operation or management of the Board of Recreation and Park



Commissioners, the Los Angeles County Department of Parks and Recreation or the Los Angeles Memorial Coliseum Commission, no person shall:

". . .

"(k) sell or offer for sale any merchandise, article or thing of any kind or nature whatsoever unless such person possesses the written consent of said Board, Department or Commission."

The petitioner had three extra tickets for the afternoon's Los Angeles Rams professional football game. Standing near the north entrance to the Coliseum he offered the tickets at face value to an undercover police officer. After the officer determined that the petitioner had no permit, he was arrested.

After his trial and conviction in the Los Angeles Municipal Court, the petitioner appealed the judgment to the Appellate Department of the Superior Court of the State of California, County of Los Angeles. The Appellate Department

reversed the judgment of conviction. The judgment of the Appellate Department was certified to and accepted by the Court of Appeal of the State of California, Second Appellate District, Division Four, thus vacating the Appellate Department's opinion. The Court of Appeal, holding Los Angeles Municipal Code § 63.51(k) constitutional, affirmed the judgment of conviction, noting:

"The purpose and effect of the ordinance is not to censor or suppress the content of the seller's message, which may lawfully be communicated elsewhere. The limitation upon the use of the park for sales solicitation is, under the circumstances, a reasonable place limitation based upon a significant governmental interest."

People v. Shepherd, supra, p. 339;  
Petition Appendix "A" p. 17.



## ARGUMENT

### THERE IS NO SUBSTANTIAL FEDERAL QUESTION PRESENTED

The "speech" involved here does not involve the dissemination of information, ideas, opinions, views or beliefs, nor does it relate to the free flow of commercial information which is in the public interest. On this basis alone this case is distinguishable from Virginia Pharmacy Board v. Virginia Citizens Consumer Council, 425 U.S. 748, 96 S.Ct. 1817, 48 L.Ed.2d 346 (1976). The petitioner makes no assertion that the tickets which he attempted to sell have any First Amendment content or involve social, political, aesthetic or moral beliefs.

Los Angeles Municipal Code § 63.51(k) withstands First Amendment strict scrutiny analysis. The use of a city park is a municipal affair, and the municipality has an interest in preserving the use of the park for the public benefit. In the case at bar, the City of Los Angeles has

an interest in protecting the Coliseum, its licensees and the public from unauthorized vendors whose interests would be incompatible with the orderly function of the park.

If it is assumed that the petitioner's activities are "speech" as contemplated by the First Amendment, even the petitioner concedes that this "speech" is subject to reasonable regulation as to time, place or manner if there is a sufficient governmental interest. [See Petition at p. 8.]

[With regard to First Amendment analysis], "laws regulating the time, place or manner of speech stand on a different footing than laws prohibiting speech altogether. Cf. e.g., Kovacs v. Cooper, 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (1949); Adderley v. Florida, 385 U.S. 39, 87 S.Ct. 242, 17 L.Ed.2d 149 (1966); Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed.2d 222 (1972)."

Linmark Associates Inc. v. Township of Willingboro, 429 U.S. 938, 97 S.Ct. 1614 (1977).



The intent and purpose of Los Angeles Municipal Code § 63.51(k) is apparent. It is park regulation restricting the time, place or manner of unlicensed business activities within the City of Los Angeles with particular reference to public parks such as the Los Angeles Memorial Coliseum.

The governmental interests protected or asserted pursuant to the state police power are as follows: 1) preserving areas for recreational use and enjoyment by preventing park patrons from being subjected to unlicensed and uncontrolled numbers of vendors; 2) avoiding congestion of pedestrian traffic around the Coliseum; 3) protecting the municipality's proprietary interests relating to sales in the park by its licensees, and; 4) protecting consumers from peddlers of counterfeit or stolen tickets and other injurious items when the anxiety and excitement of a sporting event is close at hand, and the interest in tickets is high.

By licensing the concessionaires, the municipality can regulate the places of operation and business methods, and it

can easily identify the authorized sellers. An ordinance which attempted to distinguish between the casual vendor and the commercial operator would be ineffective due to the practical problems of identification of sellers.

The ordinance in no way affects an individual's ability to sell these tickets on private property or on public property other than public parks. Under the ordinance in question a person has the right to dispose of his personal property by offering it for sale or giving it away -- but he is not entitled to use the Coliseum for that purpose. The petitioner's discussion regarding Los Angeles Municipal Code § 42.03 is irrelevant and inappropriate in that the petitioner was not arrested, charged or convicted pursuant to that code section, and its constitutional viability is open to argument in state court. People v. Van Wong, 165 Cal.App. 2d Supp. 821 (1958); Welton v. City of Los Angeles, 18 Cal.3d 497 (1976).

The purpose of § 63.51(k) is not to censor or suppress the content of the petitioner's message as petitioner has



implied (cf., Linmark Association Inc. v. Township of Willingboro, supra). Los Angeles Municipal Code § 63.51(k) is a reasonable limitation upon the use of a municipal public park for sales solicitation, and the regulation is based upon significant governmental interests.

#### THERE IS NO CONFLICT OF DECISION

After a searching examination and evaluation of the issues presented in the instant case, the California Court of Appeal concluded that Los Angeles Municipal Code § 63.51(k) was constitutional as applied. The Court of Appeal acted correctly in construing the ordinance so as to avoid an interpretation that the ordinance was unconstitutional.

"So far as statutes fairly may be construed in such a way as to avoid doubtful constitutional questions they should be so construed [citations]; and it is to be presumed that state laws will be construed in that way by the state courts."

Fox v. Washington, 236 U.S. 273, 277, 35 S.Ct. 383, 59 L.Ed. 573 (1915)

". . .[W]e take for granted that the ordinance will be so read to avoid raising difficult constitutional problems which any other application would present."

Garner v. Board of Public Works of Los Angeles, 341 U.S. 716, 724, 71 S.Ct. 909, 95 L.Ed. 1317, 1325 (1951).

These rules of construction are binding upon and followed by the California Supreme Court:

"We must, however, presume that the legislature intended to enact a valid statute: we must, in applying the provision, adopt an interpretation that, consistent with the statutory language and purpose eliminates doubts as to the provision's constitutionality [citations]."

In re Kay, 1 Cal.3d 930, 942, 83 Cal.Rptr. 686, 464 P.2d 142, (1970).

"Although a broad construction would would infest § 626.4 [of the Penal



Code] with many of the asserted constitutional infirmities, we believe that a narrower interpretation will both effectuate the legislative purpose of the statute and confine it within constitutional parameters."

Braxton v. Municipal Court,  
10 Cal.3d 138, 144 (1973).

This is necessary because a literal reading might appear too broad:

"We point out, however, that the statute, if literally applied, would succumb to constitutional attack both because of First Amendment overbreadth and vagueness."

Braxton, supra, at p. 144.

The Court of Appeal was correct in construing Los Angeles Municipal Code § 63.51(k) as a reasonable regulation in light of a compelling municipal interest. It is undisputed that the petitioner was offering tickets for sale on the Coliseum grounds. The statute was correctly applied to the petitioner's conduct. In so doing the lower court followed the

very purpose of the enactment.

". . . [W]e follow the well-settled principle that if 'the terms of a statute are by fair and reasonable interpretation capable of a meaning consistent with the requirements of the Constitution, the statute will be given that meaning, rather than another in conflict with the Constitution' [citations]."

Braxton v. Municipal Court, supra,  
at p. 145.

There is no conflict with regard to the constitutionality of the ordinance at the state level, and the petitioner's reliance on Virginia Pharmacy Board v. Virginia Citizens Consumer Council, supra, and Linmark Associates Inc. v. Township of Willingboro, supra, is misplaced. Neither of these authorities indicate a conflict of decision on the federal level with the state court's determination. Both of these cases are distinguishable from the petitioner's case.



The cases cited by petitioner involve nearly absolute restrictions on commercial communication (advertising) by businesses on private property. Further, in both of the cases relied upon by petitioner this Court held that the public had a significant interest in receiving the restricted communications.

In Linmark Associates Inc. v. Township of Willingboro, supra, this Court noted that the ordinance was not concerned with time, place or manner restrictions but with the content of the speech.

In the case at bar the petitioner has conceded that there is no First Amendment content in the tickets. The ordinance related to the power of a municipality to protect public parks, and not to the regulation of business on private property. Any time, place or manner restrictions set forth by this ordinance are compatible with First Amendment analysis, and under the ordinance petitioner has alternative methods available for disposition of his tickets.

## CONCLUSION

For the foregoing reasons it is respectfully submitted that this Petition for Writ of Certiorari should be denied.

Respectfully submitted,

BURT PINES  
City Attorney

WARD G. McCONNELL  
Assistant City Attorney

MICHAEL PETER ALCANTAR  
Deputy City Attorney

By MICHAEL PETER ALCANTAR  
Deputy City Attorney

Attorneys for Respondent  
PEOPLE OF THE STATE OF  
CALIFORNIA